

COMMUNITY AFFAIRS COMMITTEE

DATE: October 14, 2009

CALLED TO ORDER: 5:36 p.m.

ADJOURNED: 9:14 p.m.

ATTENDANCE

ATTENDING MEMBERS

Mike Speedy, Chair
Paul Bateman
Susie Day
Benjamin Hunter
Maggie Lewis
Kent Smith

ABSENT

Doris Minton-McNeill

AGENDA

Presentation on FACE Low/Spay Neuter Clinic – Ellen Robinson, Executive Director

PROPOSAL NO. 371, 2009 - amends the Code with respect to nonsmoking areas
"Do Pass as Amended" Vote: 4-2

COMMUNITY AFFAIRS COMMITTEE

The Community Affairs Committee of the City-County Council met on Wednesday, October 14, 2009 in the Public Assembly Room. Chair Mike Speedy called the meeting to order at 5:36 p.m. with the following members present: Paul Bateman, Susie Day, Benjamin Hunter, Maggie Lewis and Kent Smith. Absent was Doris Minton-McNeill. Councillors Ed Coleman, Jose Evans, Robert Lutz, Brian Mahern, Dane Mahern, Angela Mansfield, Lincoln Plowman, Christine Scales and Ryan Vaughn were also in attendance.

Presentation on FACE Low-Cost Spay/Neuter Clinic – Ellen Robinson, Executive Director

Ms. Robinson stated that the FACE Low-Cost Spay/Neuter Clinic opened on March 8, 1999. She said the FACE organization was created in 1993, at a time when high-volume, low-cost spay/neuter was a new idea. Ms. Robinson stated that Doctor Scott Robinson, founder of FACE was inspired by the animal foundation in Las Vegas, Nevada, which is a high-volume spay/neuter clinic. She said that clinic reduced euthanasia to 10,000 in a fast growing city that was projected to climb to 40,000 to 60,000 a year. Ms. Robinson stated that Dr. Robinson pursued the idea of a spay/neuter clinic with the Humane Society of Indianapolis, but they were not interested in such a clinic. Ms. Robinson stated that Dr. Robinson embarked on forming the group that would become FACE and started fundraising efforts. She said that Dr. Robinson approached the City of Indianapolis for support for the clinic, but was told by former Mayor Stephen Goldsmith that the City should not become involved with spay/neuter.

Ms. Robinson stated that from 1994 to 1999, the founders of FACE raised \$20,000 to begin construction of the clinic. FACE is open to anyone, regardless of income and location. She said that they are located in an area mostly responsible for shelter intake and euthanasia. In the ten years of operation, FACE has been keenly focused on reducing euthanasia of cats and dogs in Indianapolis. She said that FACE has continually sought grant funds and donations for programs that would directly target animals most at-risk.

Ms. Robinson stated that clients who cannot otherwise seek care through a full-service veterinarian see FACE as a resource for the care of their cat or dog. She said that FACE empowers clients through education and low-cost wellness products and services. FACE maintains a food and supply bank for clients in dire need and those who care for stray cats and dogs. Ms. Robinson stated that the solution to cat and dog overpopulation is clear and has been nationally accepted for several years. It has also been proven that no real strides in improvement of animal welfare will be achieved until the cat and dog population is in check.

PROPOSAL NO. 371, 2009 - amends the Code with respect to nonsmoking areas

Councillor Mansfield stated that the proposal as written provides for a comprehensive smoke-free air ordinance in the consolidated City of Indianapolis. She said that about five years ago, she and former Councillor Greg Bowes drafted what was then believed to be a comprehensive proposal. Unfortunately, it was a new concept in Central Indiana. The former make-up of the Council came to a compromise and that previous proposal was a first step. Councillor Mansfield stated that both first and second-hand smoking are not healthy and are very dangerous. She said that, with regard to second-hand smoke, it is mainly hospitality workers who have to deal with that. Councillor Mansfield stated that it is

time that this city has a comprehensive smoking ban, because that ties into the type of city we are. She asked how the city will be able to compete with other cities marketing itself as a leader of the Life Science industry, professional and amateur sports and convention business. Councillor Mansfield stated that she appreciates the bi-partisan effort that has taken place on this proposal.

Councillor Hunter introduced experts to offer strong testimony on all aspects of Proposal No. 371, 2009.

Dr. Nasser Hanna, Oncologist, Indiana University (IU) Simon Cancer Center, stated that as a cancer doctor that takes care of dying people of second-hand smoke, he sees the suffering in those people. They are in pain, cannot eat, loose weight and their families suffer. He said that those patients wish it would go away, but it does not until their suffering ends. Dr. Hanna stated that one of his patients never smoked but was dying of lung cancer caused by second-hand smoke. He said that toward the end of that patient's life, her daughter asked him to make her mother better. Dr. Hanna asked that when hearing the debate of the pros and cons of the proposal, the committee members consider voting on a better future of the citizens of Indianapolis and if their vote will help others.

Dr. Terry Zollinger, Second-Hand Smoke Economic Impact Study, stated that exposure to second-hand smoke is not only a significant health concern, but it is an economic concern as well. He said that the purpose of this study was to estimate the cost of healthcare and premature loss of life resulting from second-hand smoke exposure in Indiana. Dr. Zollinger said that the overall cost of healthcare for premature loss of life contributed to second-hand smoke for Indiana residents was estimated to be \$390 million in 2007. He said that equates to \$61.51 per capita. Dr. Zollinger stated that this does not include the healthcare and loss of life costs for smokers. It is just for second-hand smoke exposure. Dr. Zollinger stated that the estimated cost for healthcare and loss of life for primary smokers for the state is over \$2 billion per year. He said that causes him to wonder who pays for this cost. He said that employers and businesses have to pay higher health insurance costs for loss of productivity and for loss of employees who die prematurely. Dr. Zollinger stated that consumers and employees have to pay higher insurance premiums, higher deductibles and co-pays, as well as higher prices for goods and services. He said that all of us bear the cost burden for healthcare of the uninsured population and pay higher taxes for those on Medicaid and Medicare.

Dr. Eric Wright, IU Center for Health Policy, stated that talk of expanding the current smoking ban to include restaurants, bars and casinos is important to realize that this is part of a national effort to consider this important issue. He said that in Marion County, there are approximately 39,000 workers in the restaurant, bar and casino industry. Dr. Wright stated that second-hand smoke in these facilities are significantly higher and has a huge impact on the health of the workers. He said that as of January 2009, 15 states, including Puerto Rico, have enacted a 100% smoke-free law that covers all indoor work places. He said that within Indiana, nine cities have implemented smoke-free laws for all work places, including restaurants and bars. Dr. Wright stated that many business owners that allow smoking believe that smoke-free work place laws will discourage and alienate smoking customers, decrease sales and cause higher unemployment. He said that the

Surgeon General's 2006 report states that smoke-free policies do not have an inverse impact on hospitality.

Bill Corley, President, Community Health Network, stated that he supports the proposal for smoke-free work places.

Vince Capone, President and Chief Executive Officer (CEO), St. Vincent Health, stated that all of the CEO's of the major hospitals in Indianapolis adopt the smoking ban proposal without amendments, so that workers and residents of Indianapolis are protected from exposure to second-hand smoke. He said that, as the leaders in the Indianapolis health community, they provide care to many individuals and families suffering from diseases caused by second-hand smoke. Mr. Capone stated that hospitals bear witness to the significant health burden that second-hand smoke places on the community. The science is overwhelmingly conclusive that second-hand smoke causes heart disease, lung cancer, respiratory illness and many other acute diseases. Mr. Capone stated that smoke-free laws are proven to save lives and prevent disease, and have been shown to produce a significant and needed reduction in hospital admissions. Mr. Capone stated that hospitality establishments have among the highest levels of exposure to second-hand smoke and these are the types of workplaces least likely to be productive by volunteering smoke-free policies. He said that research shows that workers in hospitality venues have the greatest risk of disease caused by second-hand smoke. Mr. Capone stated that a comprehensive smoke-free ordinance for Indianapolis will not only save lives and prevent disease, but will also show potential employers that are considering locating to the city that Indianapolis is serious about reducing preventable health care costs and improving the quality of life in the city. Mr. Capone stated that this ordinance should be adopted because it is good for the health of the people and for the economic prospects for the city.

Dr. Virginia Caine, Director, Marion County Health Department (MCHD), stated that the MCHD and the public health structure across the country is charged with protecting public health. She said that our citizens expect that our public health and hospital officials are behind the scenes assuring healthy environments in which we live, work and play. Dr. Caine stated that the MCHD is fully in favor of assuring smoke-free workplaces for every indoor worker, including those that work in bars, bowling alleys and clubs. She said that everyone deserves a healthy environment.

Dr. Jim Wolfe, IU Survey Research Center, stated that 90% of individuals who work in Marion County are already working in smoke-free establishments. He said that 70% of smokers agree people should be protected from second-hand smoke in the workplace. Dr. Wolfe stated that over 60% say that it is a serious health hazard. He said that 83% of individuals agree that the rights of non-smokers are better than smokers.

Chair Speedy asked for any amendments to the proposal. Councillor Vaughn discussed in detail, a proposed amendment, which is attached as Exhibit A.

Councillor Vaughn stated that the smoking ban issue is very important to a number of people, but he does not see it as a core issue with this Council body. He said that he is more focused on issues like, public safety, taxes and budgets. He said that he has to determine how it affects his constituents. There are several businesses in his district that

meet the definition of specialty tobacco bars, and the reason he has pursued an exemption for these particular businesses is simply because other businesses may survive, but these businesses are dependent upon the sale of tobacco. Councillor Vaughn stated that these businesses in his district will have to close their doors if smoking is banned. That would negatively impact several areas in his district, most notably Broadripple, that has a couple of these establishments and they have asked him to champion their cause.

Councillor Hunter stated that this important issue affects the bottom line of healthcare costs, economic development and moving this city. He said that he appreciates Councillor Vaughn's willingness to work with him and others on this matter.

Councillor Hunter moved, seconded by Councillor Smith, to 'Amend" Proposal No. 371, 2009, as described in Exhibit A.

Councillor Plowman asked if the amendment that was discussed is three different amendments. Councillor Vaughn stated that it is not three amendments; it is just one with three sections. Chair Speedy asked Councillor Hunter if that is the intent of this amendment. Councillor Hunter answered in the affirmative.

Councillor Mansfield stated that rather than moving forward on any amendments, it would be helpful to hear all of the amendments and then have public comment before the committee acts on the proposal.

Councillor Scales stated that the current smoking ordinance in Marion County works. It has already segregated non-smokers from smokers. She said that all facilities that members of the public enter are smoke-free. Councillor Scales stated that currently there is no reason that a non-smoker has to subject themselves to the effects of tobacco smoke, if they do not choose to do so. She said that a person has to go out of their way to be offended by a smoking environment and if they did, they would do so voluntarily. Councillor Scales stated that about 400 facilities in Marion County have the required exemptions that allow them to cater to adult smoking patrons. Those 400 or more are a negligible amount of properties of the larger business establishments in Marion County where smoking is prohibited. Councillor Scales stated that our country talks a lot about diversity and inclusiveness, particularly for those in any minority group, and these smoking ban folks seem to be throwing all of that out of the window. She said that those pushing for this proposal want a zero-tolerance policy and that is not reasonable or acceptable. Councillor Scales stated that, in terms of economics, our city relies heavily on revenues and taxes generated by conventions and sports events that are attended by smokers who patronize smoking-tolerant businesses. Councillor Scales stated that if Indianapolis wins a convention with this total smoking ban, it may find smokers seeking rooms in Carmel and other cities surrounding Marion County with limited smoking bans, which will affect hotel room revenues and breakfast and dinner dollars, as well. Councillor Scales stated that instead of a total smoking ban, this city should vigorously enforce the laws that prevent the sale of tobacco to underage smokers and prosecute the retailers who break those laws. Councillor Scales stated that this city needs to enforce the current laws on the books, use common sense, and stop trying to micro-manage each other's lives.

Councillor Bateman stated that he would like to offer an amendment to the amendment in hopes that a compromise will be reached. Chair Speedy asked if Councillor Bateman's amendment is something that can be technically cleaned up at the end of public comment. He asked if the amendment introduces new material other than what is in the proposal or the proposed amendment. Councillor Bateman stated that the committee can proceed with public comment.

Councillor Coleman stated that every death that is related to lung cancer tends to get lumped into second-hand smoke whether it is or not. No one is under the assumption that smoking is good for you. He said that all of the numbers and arguments that are out there end up not being correct. Councillor Coleman stated that the government should not tell private property owners what they can and cannot do in their own homes or bars. He stated that a line should be drawn and this proposal should not pass.

Councillor Brian Mahern stated that for him, this issue is about workplace safety. He said that the Council conceded the health detriment of second-hand smoke when in 2005, it enacted the current ordinance. He said that the current ordinance protects all workplaces that are not voluntarily being protected. Councillor Mahern stated that the current proposal is to protect all workers without regard to where that person works. He said that 70% of the population lives under bans that do not include smoking bans for bars or taverns. Councillor Mahern stated that we cannot lose sight of the people that live and work in our community that deserve a safe workplace. Councillor Mahern stated that he would like to be added to the proposal as a co-sponsor.

Councillor Day stated that she has heard over and over that this proposal was meant to be a total smoking ban which is meant to protect everyone from second-hand smoke in the workplace. She stated that there is an amendment to exclude tobacco specialty bars. Councillor Day asked if the Council is trying to protect everyone from second-hand smoke or not.

Councillor Plowman stated that he appreciates all of the medical experts that came to speak to the affects of second-hand smoke. He said that he is not 100% sure if all that was said is factual. Councillor Plowman stated that there was a study done using the Bureau of Labor Statistics that stated that there was no significant drop in business in restaurants, but a significant loss of business in bars with estimates ranging between four and sixteen percent. Councillor Plowman stated that this ban would not only ban smoking in bars and nightclubs, it also bans smoking in nursing homes as well. He said that the government intrudes where they should not. Councillor Plowman stated that this is not the right way to go. There are safeguards in place for adults who are making adult decisions.

Councillor Smith stated that when a life is lost, that is it. He said that we as Councillors are here to protect the citizens. Councillor Smith stated that the more a person is exposed to the carcinogens that cause cancer, the likelihood of that person getting cancer is greater. Councillor Smith stated that if you put people in a dangerous situation, it is more likely that something will happen.

Councillor Bateman stated that African Americans suffer a greater loss due to second-hand smoke. He said that when there is talk about science versus economics, the decision

is simple for him to air on the side of making sure that a safe workplace is provided for those who have inhaled those carcinogens. Councillor Bateman stated that as a Councillor, his job is to protect the citizens of Indianapolis.

Councillor Evans stated that this proposal is about making Indianapolis a more welcoming city. He said that Indianapolis has a great downtown scene and nightlife, an exciting Broad Ripple Village and a culture that enjoys having a drink at a number of bars across the city. Councillor Evans stated that this proposal seeks to enhance that culture and make it a safer experience for residents and guests of the city. He said that with this proposal, they are trying to limit the exposure of workers, residents and guests to harmful smoke. Councillor Evans stated that he hopes that fellow Councillors will support this proposal for a healthier Indianapolis.

Councillor Dane Mahern stated that this proposal is looking to make some exceptions to bars that make a lot of money. He said that is not fair for the small independent establishments who cannot come anywhere near selling \$100,000 worth of products. He said that is going to totally take out the small businesses. Councillor Dane Mahern stated that this is not an easy decision for anyone. This should be a state-wide issue not community against community. Councillor Dane Mahern stated that if this proposal passes it will give certain bars with a lot of money an unfair advantage.

Councillor Hunter asked for permission to withdraw his first amendment and offer a second one. Chair Speedy gave consent.

Councillor Hunter moved to amend Proposal No. 371, 2009, as described in Exhibit B. Councillor Mansfield stated that she would like to offer a friendly amendment to Exhibit B. She stated that the word "and" needs to be taken out before, "is engaged." She said that an additional sentence, which reads as follows: "and is not physically located within a business otherwise required to be smoke-free" needs to be added before the start of the sentence, "Tobacco vending machines." Councillor Hunter agreed to the friendly amendment. Councillor Bateman seconded the motion to amend Proposal No. 371, 2009, as per Exhibit B with Councillor Mansfield's suggestions.

Chair Speedy asked what the difference is between this amendment and the one that was withdrawn. Councillor Vaughn stated that this amendment moves the percentage of total gross revenue from 30% to 15%, but removes from consideration those revenues generated from the rental of humidors. He said that it clearly defines what a Hookah bar establishment is and the language from Corporation Counsel regarding enforcement.

The following people spoke in favor of the proposal:

Tanya Bell, President and CEO, Indiana Black Expo; Robert Willis, citizen; Barbara Woods, citizen; Lourdes Borrego-O'Brien, Indiana State Hispanic Chamber; Kim Williams, American Cancer Society; Tom Lux, Mental Health America of Indiana; Adam Longworth, citizen; Jessica Kelly, American Lung Association; Jill Margetts, citizen; Greg Bowes, Marion County Assessor; Liza Sumpter, citizen; Millie Moran, Indiana Public Health Association; Mary Ann Sullivan, State Representative, District 97; Graham Brinklow, citizen; Jared Thompson, musician; Rob Dixon, musician; Debi Hudson, citizen; Daren

Short, musician; David Short, musician; Reverend Daniel Gangler, United Methodist Church; Lauren Koors, citizen; Jennifer Taylor, citizen; Miranda Spitznagle, Indiana Tobacco Prevention & Cessation; Mark Sneegas, citizen; Tim Filler, citizen; Stacy Griffith, citizen; Bronson Frick, citizen; Jack Frick, citizen; Jerry King, citizen; and Chris Fausel, citizen. Their comments include the following key points:

- Indianapolis needs to take a bold step to consider this proposal and the harmful effects of second-hand smoke.
- People are physically ill when they are around cigarette smoke.
- Restaurant and bar employees are at risk.
- More people die from lung cancer than do not smoke.
- Non-smoking venues will attract more business if they go smoke-free.
- Families are affected by the deaths of their non-smoking family members caused by second-hand smoke.
- The City of Indianapolis needs to be healthy.

The following people spoke in opposition of the proposal:

Michael and Bill Smythe, owners, Claude and Annie's; Brad Klopenstein, citizen; Bob Welch, citizen; Tim Maguire, Chairman, Marion County Libertarian Party; Kendal Langdon, citizen; Ed Angleton, Vice-Chairman, Marion County Libertarian Party; James Waanders, owner, Lockerbie Pub; Jim Majdak, citizen; Carlos Harrington, citizen; Mark Rutherford, citizen; Jeff Kent, citizen; and George Stegiopoulous, citizen. Their comments include the following key points:

- The current smoking law is working and should not be changed.
- Passing the smoking ban will take choices away from employers.
- This ban is going against citizen's property rights.
- Adults can choose where they want to go.
- The smoking ban will affect restaurant and bar employees' paychecks.
- With the economy down, businesses are not able to take another hit to their bottom line.
- If smoking is banned, smokers will go elsewhere to give their business.

The motion to amend Proposal No. 371, 2009, as per Exhibit B with Councillor Mansfield's changes carried by a vote of 4-2, with Councillors Speedy and Day casting the negative votes.

Councillor Hunter moved, seconded by Councillor Bateman, to send Proposal No. 371, 2009 to the full Council with a "Do Pass as Amended" recommendation. The motion carried by a vote of 4-2, with Councillors Speedy and Day casting the negative votes.

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With no further business pending, and upon motion duly made, the Community Affairs Committee of the City County Council was adjourned at 9:14 p.m.

Respectfully submitted,

Mike Speedy, Chair
Community Affairs Committee

MS/law

COMMITTEE MOTION

Mr. Chairman:

I move to amend Proposal No. 371, 2009, as follows:

First Amendment:

In SECTION 2, delete subsection (c) in Sec. 616-204.

Second Amendment:

In SECTION 4, amend Sec. 606-301, subsection (b) by deleting the strike-through and the underlined text so that no changes are made to that subsection.

Third Amendment:

- 1) In SECTION 2, add a new item (4) in subsection 616-204(a) to read as follows:
“(4) Tobacco businesses licensed under Chapter 986 of this code.”
- 2) Renumber SECTION 6 as SECTION 7 and add a new SECTION 6, to read as follows:

SECTION 6. The Revised Code of the Consolidated City and County be, and is hereby, amended by adding a new Chapter 986, to read as follows:

CHAPTER 986 - TOBACCO BUSINESSES

Sec. 986-101. Purpose. It is the purpose of this chapter to regulate certain business where use of tobacco products is permitted to promote the health, safety, and general welfare of the citizens of Marion County.

Sec. 986-102 “Tobacco Specialty Bar” means a business is licensed to sell alcoholic beverages for on-premises consumption and in which the service of food is only incidental to the consumption of such beverages; and is engaged in the business of selling cigars, Hookah tobaccos and/or rental of humidors and where at least \$100,000.00 or 30 percent or more of its total annual gross income is derived from the on-site sale of cigars, sale of Hookah tobaccos and the rental of humidors. Tobacco vending machine sales shall not be considered as part of the revenue from cigars and/or humidor rental.

Sec. 986-201. Licenses authorized. A tobacco business wishing to permit smoking at its business location my apply to the license administrator for a license as a Tobacco Specialty Bar, by making application under this Chapter.

Sec. 986-202. Application for Tobacco Business License.

(a) The application for a tobacco business license under this chapter shall be filed by the owner of the business and shall contain the following information which shall be verified by the owner under penalties for perjury.

(b) An application by a tobacco specialty bar shall include information that it meets the definition in Sec. 986-102(1), that it permits no one under the age of twenty-one years to enter its business, that it employs no one under the age of twenty-one years, is not physically located within a business that is otherwise required to be smoke free by Chapter 616, and has notified the Marion County Health Department that it intends to allow smoking on the premises.

(c) The application shall be accompanied by a fee of \$250.00.

Sec. 986-203. License. If the license administrator determines that the applicant qualifies for a tobacco license under this Chapter, the license shall be issued for the remainder of the calendar year upon payment of the annual license fee of \$1000 for a tobacco specialty bar. The license may be renewed annually upon application by the business demonstrating it still qualifies under this Chapter.

Sec. 986-204. Initial applications and limitations on licenses. Initial applications for tobacco business licenses under this chapter shall be filled on or before December 31, 2009. The number of licenses issued under this chapter shall be limited to the number of qualified applications received on or before December 31, 2009.

Sec. 986-205. Nothing in this chapter shall be deemed to restrict or require a license for the lawful sale of tobacco products where smoking is not permitted.

COMMITTEE MOTION

Mr. Chairman:

I move to amend Proposal No. 371, 2009, as follows:

First Amendment:

In SECTION 2, delete subsection (c) in Sec. 616-204.

Second Amendment:

In SECTION 4, amend Sec. 606-301, subsection (b) by deleting the strike-through and the underlined text so that no changes are made to that subsection.

Third Amendment:

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SECTION 6. The Revised Code of the Consolidated City and County be, and is hereby, amended by adding a new Chapter 986, to read as follows:

CHAPTER 986 - TOBACCO BUSINESSES

Sec. 986-101. Purpose. It is the purpose of this chapter to regulate certain business where use of tobacco products is permitted to promote the health, safety, and general welfare of the citizens of Marion County.

Sec. 986-102 “Tobacco Specialty Bar” means a business is licensed to sell alcoholic beverages pursuant to a Type 210 retailer permitted issued by the Indiana Alcohol & Tobacco Commission for on-premises consumption and in which the service of food is only incidental to the consumption of such beverages and the sale of cigars or Hookah tobacco; and is engaged in the business of selling cigars or Hookah tobaccos and where at least \$100,000.00 or 15 percent or more of its total annual gross income is derived from the on-site sale of cigars or Hookah tobaccos. Tobacco vending machine sales shall not be considered as part of the revenue from cigars and/or humidor rental.

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and is not physically located within a business otherwise required to be smoke free.

(a) The application for a tobacco business license under this chapter shall be filed by the owner of the business and shall contain the following information which shall be verified by the owner under penalties for perjury:

(1) An application by a tobacco specialty bar shall include information that it meets the definition in Sec. 986-102(1), that it permits no one under the age of twenty-one years to enter its business, that it employs no one under the age of twenty-one years, is not physically located within a business that is otherwise required to be smoke free by Chapter 616, and has notified the Marion County Health Department that it intends to allow smoking on the premises.

(2) The application shall be accompanied by a fee of \$250.00.

Sec. 986-203. License. If the license administrator determines that the applicant qualifies for a tobacco license under this Chapter, the license shall be issued for the remainder of the calendar year upon payment of the annual license fee of \$1000 for a tobacco specialty bar. The license may be renewed annually upon application by the business demonstrating it still qualifies under this Chapter.

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Sec. 986-205. Nothing in this chapter shall be deemed to restrict or require a license for the lawful sale of tobacco products where smoking is not permitted.

Fourth Amendment

SECTION 5. Section 616-401 of the "Revised Code of the Consolidated City and County," as amended by G. O. No. 63, 2009 with an effective date of January 1, 2010, regarding enforcement of restrictions on smoking, hereby is amended by the deletion of the language that is stricken-through, and by the addition of the language that is underscored, to read as follows:

Sec. 616-401. Enforcement.

(a) This Chapter shall be enforced by:

~~(1)~~(1) the director of the Department of Metropolitan Development defined in Section 231-211, or the director's designee, deputy director of the department of code enforcement, division of inspections;

~~(2)~~ ——— the administrator of the division of compliance defined in Section 231-306,

~~(3)~~ ——— the administrator of the environmental services defined in Section 511-302,

- (4)(2) fire department personnel authorized to conduct fire inspections in accordance with Section 591-221, ~~and~~
(5) ~~the Administrator and building inspectors defined in Section 730-501, and~~
(6)(3) the director of the division of public health, the director's authorized representative, a supervisor in the division, or an environmental health specialist of the Health and Hospital Corporation of Marion County.
- (b) Any citizen who desires to register a complaint under this Chapter may initiate enforcement with the Corporation Counsel defined in Section 202-101, or with the City Prosecutor referred to in Section 103-5.
- (c) An owner, manager, operator, or employee of an establishment regulated by this Chapter shall inform persons violating this Chapter of the appropriate provisions thereof and shall ask those persons to refrain from smoking.
- (d) ~~For a bar or tavern that elects to be exempted under the provisions of Sec. 616-205(a)(8), it shall be the duty of the owner, manager, or operator to ensure that no persons under the age of eighteen (18) are allowed to enter, except as provided in that section.~~

Proposal No. 371, 2009 shall be and hereby is amended by the addition of substitution of new SECTIONS 6, 7, 8 and 9 for current SECTION 6, to read as follows:

SECTION 6. Notwithstanding the provisions of Section 616-401 as amended by SECTION 5 of this ordinance, Chapter 616 shall be enforced prior to January 1, 2010 by the following: the director of the department of metropolitan development defined in Section 231-211, or the director's designee; the administrator of the division of compliance defined in Section 231-306; the administrator of the environmental services defined in Section 511-302; fire department personnel authorized to conduct fire inspections in accordance with Section 591-221; the administrator and building inspectors defined in Section 730-501; and the director of the division of public health, the director's authorized representative, a supervisor in the division, or an environmental health specialist of the Health and Hospital Corporation of Marion County.

SECTION 7. The expressed or implied repeal or amendment by this ordinance of any other ordinance or part of any other ordinance does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this ordinance. Those rights, liabilities, and proceedings are continued, and penalties shall be imposed and enforced under the repealed or amended ordinance as if this ordinance had not been adopted.

SECTION 8. Should any provision (section, paragraph, sentence, clause, or any other portion) of this ordinance be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provision or provisions shall not be affected, if and only if such remaining provisions can, without the invalid provision or provisions, be given the effect intended by the Council in adopting this ordinance. To this end the provisions of this ordinance are severable.

SECTION 9. This ordinance shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.